

General Information Letter: In general, refund claims for overpayment of withheld taxes must be filed no later than 3 years after the 15th day of the 4th month after the end of the year in which withheld.

November 3, 2000

Dear:

This is in response to your letter of September 20, 2000 in which you request a letter ruling. Department rules require that the Department issue two types of rulings, private letter rulings and general information letters. The Department has adopted rules concerning letter rulings and other information issued by the Department (*2 Ill. Adm. Code 1200*). We would be happy to send you a copy of those rules at your request.

Although you have not requested either type of ruling on behalf of your company, the nature of your questions and the information you provided necessitates that we respond in the form of general information letter. A general information letter, which is designed to provide general information, is not a ruling that is binding on the Department.

In your letter you stated:

I recently called the Illinois Department of Revenue office to get information to receive a refund for an overpayment for October payroll tax paid twice and learned that we have an overpayment that dates to First Quarter of 1991 for the amount of \$957.14. Because of the amount of time that has lapse since the overpayment and my first knowledge of same, I was advised to appeal to the legal department for the possibility of a refund and fair treatment.

We are a small family business utilizing one accounting office staff. The person in charge of all financial reports died unexpectedly and caused great turmoil and disorder in our business for quite some time after her death, which occurred about the time of the First Quarter, 1991 overpayment. So because of turnover and the lack of auditing skills by the interim staff, this overpayment was not known to us. It was a stroke of luck that I became aware of the October, 1999 payment made twice.

The Illinois Department of Revenue policy of not sharing information known by your office is unfair to small business. The IDR keeps any overpayments made to you unless the unfortunate business is lucky or has enough skilled staff to discover any discrepancies in your favor. We are financially penalized heavily for making a mistake.

I am requesting, because we were never notified, and because of the turmoil of the death of a family member that was head of accounting, that the overpayment of \$957.14 be refunded.

We will appreciate your thoughtful consideration of our plight, and hope that you will refund or credit not only the 1991 overpayment but interest as well, because of the great length of time that you have held our funds.

DISCUSSION

For Illinois income tax purposes a taxpayer must generally claim a refund within 3 years of the date the appropriate return was filed. Section 911 of the Illinois Income Tax Act, 35 ILCS 5/911, states in part:

(a) In general. Except as otherwise provided in this Act:

(1) A claim for refund shall be filed not later than 3 years after the date the return was filed (in the case of returns required under Article 7 of this Act **respecting any amounts withheld as tax, not later than 3 years after the 15th day of the 4th month following the close of the calendar year in which such withholding was made**), or one year after the date the tax was paid, whichever is the later; and

(2) No credit or refund shall be allowed or made with respect to the year for which the claim was filed unless such claim is filed within such period. (emphasis added).

Accordingly, despite the compelling circumstances you describe the General Assembly has seen fit to limit claims for refunds to three years. The Department is bound by the law so your claim would be barred by the statute of limitations.

As mentioned above, this is merely a general information letter and not a statement of policy and is not binding upon the Department. I hope that this has been helpful to you. The Department maintains a website, which can be accessed at www.revenue.state.il.us. If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

Charles E. Matoesian
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